

EXPIRATION OF GIFT CERTIFICATES

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne A. Harper

Senate Sponsor: Ed Mayne

LONG TITLE

General Description:

This bill prohibits the issuance of a gift certificate that expires sooner than five years after issuance.

Highlighted Provisions:

This bill:

- ▶ makes it a violation of Title 13, Chapter 11, Utah Consumer Sales Practices Act, to issue a gift certificate that has an expiration date or deducts a fee without disclosing the expiration date or fee on the gift certificate or its packaging;

- ▶ provides that a gift certificate that does not disclose an expiration date or fee neither expires nor is subject to a fee; and

- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

13-11-4, as last amended by Chapter 115, Laws of Utah 2006

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **13-11-4** is amended to read:

13-11-4. Deceptive act or practice by supplier.

(1) A deceptive act or practice by a supplier in connection with a consumer transaction violates this chapter whether it occurs before, during, or after the transaction.

(2) Without limiting the scope of Subsection (1), a supplier commits a deceptive act or practice if the supplier knowingly or intentionally:

(a) indicates that the subject of a consumer transaction has sponsorship, approval, performance characteristics, accessories, uses, or benefits, if it has not;

(b) indicates that the subject of a consumer transaction is of a particular standard, quality, grade, style, or model, if it is not;

(c) indicates that the subject of a consumer transaction is new, or unused, if it is not, or has been used to an extent that is materially different from the fact;

(d) indicates that the subject of a consumer transaction is available to the consumer for a reason that does not exist;

(e) indicates that the subject of a consumer transaction has been supplied in accordance with a previous representation, if it has not;

(f) indicates that the subject of a consumer transaction will be supplied in greater quantity than the supplier intends;

(g) indicates that replacement or repair is needed, if it is not;

(h) indicates that a specific price advantage exists, if it does not;

(i) indicates that the supplier has a sponsorship, approval, or affiliation the supplier does not have;

(j) (i) indicates that a consumer transaction involves or does not involve a warranty, a disclaimer of warranties, particular warranty terms, or other rights, remedies, or obligations, if the representation is false; or

(ii) fails to honor a warranty or a particular warranty term;

(k) indicates that the consumer will receive a rebate, discount, or other benefit as an inducement for entering into a consumer transaction in return for giving the supplier the names of prospective consumers or otherwise helping the supplier to enter into other consumer transactions, if receipt of the benefit is contingent on an event occurring after the consumer

enters into the transaction;

(l) after receipt of payment for goods or services, fails to ship the goods or furnish the services within the time advertised or otherwise represented or, if no specific time is advertised or represented, fails to ship the goods or furnish the services within 30 days, unless within the applicable time period the supplier provides the buyer with the option to:

(i) cancel the sales agreement and receive a refund of all previous payments to the supplier if the refund is mailed or delivered to the buyer within ten business days after the day on which the seller receives written notification from the buyer of the buyer's intent to cancel the sales agreement and receive the refund; or

(ii) extend the shipping date to a specific date proposed by the supplier;

(m) except as provided in Subsection (3)(b), fails to furnish a notice meeting the requirements of Subsection (3)(a) of the purchaser's right to cancel a direct solicitation sale within three business days of the time of purchase if:

(i) the sale is made other than at the supplier's established place of business pursuant to the supplier's personal contact, whether through mail, electronic mail, facsimile transmission, telephone, or any other form of direct solicitation; and

(ii) the sale price exceeds \$25;

(n) promotes, offers, or grants participation in a pyramid scheme as defined under Title 76, Chapter 6a, Pyramid Scheme Act;

(o) represents that the funds or property conveyed in response to a charitable solicitation will be donated or used for a particular purpose or will be donated to or used by a particular organization, if the representation is false;

(p) if a consumer indicates the consumer's intention of making a claim for a motor vehicle repair against the consumer's motor vehicle insurance policy:

(i) commences the repair without first giving the consumer oral and written notice of:

(A) the total estimated cost of the repair; and

(B) the total dollar amount the consumer is responsible to pay for the repair, which dollar amount may not exceed the applicable deductible or other copay arrangement in the

86 consumer's insurance policy; or

87 (ii) requests or collects from a consumer an amount that exceeds the dollar amount a
88 consumer was initially told the consumer was responsible to pay as an insurance deductible or
89 other copay arrangement for a motor vehicle repair under Subsection (2)(p)(i), even if that
90 amount is less than the full amount the motor vehicle insurance policy requires the insured to
91 pay as a deductible or other copay arrangement, unless:

92 (A) the consumer's insurance company denies that coverage exists for the repair, in
93 which case, the full amount of the repair may be charged and collected from the consumer; or

94 (B) the consumer misstates, before the repair is commenced, the amount of money the
95 insurance policy requires the consumer to pay as a deductible or other copay arrangement, in
96 which case, the supplier may charge and collect from the consumer an amount that does not
97 exceed the amount the insurance policy requires the consumer to pay as a deductible or other
98 copay arrangement;

99 (q) includes in any contract, receipt, or other written documentation of a consumer
100 transaction, or any addendum to any contract, receipt, or other written documentation of a
101 consumer transaction, any confession of judgment or any waiver of any of the rights to which a
102 consumer is entitled under this chapter;

103 (r) charges a consumer for a consumer transaction that has not previously been agreed
104 to by the consumer;

105 (s) solicits or enters into a consumer transaction with a person who lacks the mental
106 ability to comprehend the nature and consequences of:

107 (i) the consumer transaction; or

108 (ii) the person's ability to benefit from the consumer transaction;

109 (t) solicits for the sale of a product or service by providing a consumer with an
110 unsolicited check or negotiable instrument the presentment or negotiation of which obligates the
111 consumer to purchase a product or service, unless the supplier is:

112 (i) a depository institution under Section 7-1-103;

113 (ii) an affiliate of a depository institution; or

(iii) an entity regulated under Title 7, Financial Institutions Act; ~~or~~

(u) sends an unsolicited mailing to a person that appears to be a billing, statement, or request for payment for a product or service the person has not ordered or used, or that implies that the mailing requests payment for an ongoing product or service the person has not received or requested[-]; or

(v) issues a gift certificate, instrument, or other record in exchange for payment to provide the bearer, upon presentation, goods or services in a specified amount without printing in a readable manner on the gift certificate, instrument, packaging, or record any expiration date or information concerning a fee to be charged and deducted from the balance of the gift certificate, instrument, or other record.

(3) (a) The notice required by Subsection (2)(m) shall:

(i) be a conspicuous statement written in dark bold with at least 12 point type on the first page of the purchase documentation; and

(ii) read as follows: "YOU, THE BUYER, MAY CANCEL THIS CONTRACT AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY (or time period reflecting the supplier's cancellation policy but not less than three business days) AFTER THE DATE OF THE TRANSACTION OR RECEIPT OF THE PRODUCT, WHICHEVER IS LATER".

(b) A supplier is exempt from the requirements of Subsection (2)(m) if the supplier's cancellation policy:

(i) is communicated to the buyer; and

(ii) offers greater rights to the buyer than Subsection (2)(m).

(4) (a) A gift certificate, instrument, or other record that does not print an expiration date in accordance with Subsection (2)(v) does not expire.

(b) A gift certificate, instrument, or other record that does not include printed information concerning a fee to be charged and deducted from the balance of the gift certificate, instrument, or other record is not subject to the charging and deduction of the fee.

(c) Subsections (2)(v) and (4)(b) do not apply to a gift certificate, instrument, or other

142 record useable at multiple, unaffiliated sellers of goods or services if an expiration date is
143 printed on the gift certificate, instrument, or other record.